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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

AMERICAN AUTOMOBILE INSURANCE COMPANY, Plaintiff and Respondent, v. CBL INSURANCE SERVICES, INC., et al., Defendants and Appellants.	G039051 (Super. Ct. No. 03CC00217)
SENNA INVESTMENTS, LLC, et al., Plaintiffs and Appellants, v. AMERICAN AUTOMOBILE INSURANCE COMPANY, Defendant and Respondent.	(Super. Ct. No. 05CC12217) O P I N I O N

Appeals from a judgment of the Superior Court of Orange County, Ronald L. Bauer, Judge. Affirmed.

Goshgarian & Marshall, John A. Marshall and Merak Eskigian for Defendant and Appellant Joseph Bartholomew.

Spach, Capaldi & Waggaman, Madison S. Spach, Jr., and Thomas E. Walling for Defendants and Appellants Senna Investments, LLC, Senna Corporation, Charles Seven, Evergreen Financial Transactions, Inc. and Floyd Enterprises, LLC and Plaintiffs and Appellants Senna Investments LLC and Senna Corporation.

Tressler, Soderstrom, Maloney & Priess, Paul S. White, Evan B. Sorensen, and Jeanne S. Kuo for Plaintiff, Defendant and Respondent American Automobile Insurance Company.

* * *

This appeal concerns the validity of a judgment for declaratory relief finding professional liability insurance policies issued to an insurance agency did not provide coverage for damage claims asserted by parties who loaned the agency money to fund a program that assisted purchasers of large life insurance policies in financing the policies' initial premiums.

Appellants contend the judgment is erroneous because the motion procedure adopted by the trial court that led to entry of judgment for respondent failed to comply with Code of Civil Procedure section 437c and was not otherwise justified by the fact this case had been declared a complex matter. On the merits, appellants claim the court erred in finding two policy exclusions, one for damage claims by nonclients and a second for the insured's acts as a broker/dealer for securities transactions, barred recovery from the insurer. Since the procedure employed substantially complied with the requirements of the summary judgment statute, appellants fail to identify any prejudice from the manner in which the case was heard and because the trial court properly found

no material issue of fact existed concerning the applicability of the nonclient policy exclusion, we affirm the judgment.

FACTS

CBL Insurance Services, Inc. (CBL) was a life insurance agency owned by its president, appellant Joseph Bartholomew, and its vice president, Stephen Goold. Between June 1999 and June 2002, American Automobile Insurance Company (American) issued to CBL three annual life insurance agents' and brokers' errors and omissions liability insurance policies.

Under the policies American agreed "[t]o pay on behalf of the insured, all sums which the insured shall become legally obligated to pay as damages because of: [¶] A. Any act, error or omission of the insured, or of any person for whose acts the insured is legally liable in rendering or failing to render professional services for others in the conduct of the . . . insured's profession as a: [¶] 1. Licensed Life Agent, Broker, Brokerage General Agent, General Agent or Manager . . .; [¶] . . . [¶] B. Any real or alleged negligence in rendering or failing to render professional services under: [¶] 1. the Employee Retirement Income Security Act of 1974; [¶] 2. the Securities Act of 1933, [¶] 3. the Securities Exchange Act of 1934, [¶] 4. the Investment Company Act of 1940, [¶] 5. the Investment Advisors Act of 1940, and [¶] 6. any amendment to the above acts, [¶] which occurs in the conduct of the . . . insured's profession . . . ." (Some capitalization omitted.)

Each policy defined "professional services" as "those services necessary to the conduct of the insurance business of the . . . insured." It included "1. The sale and/or servicing of: [¶] a. Life Insurance, Accident and Health Insurance . . . . [¶] b. Workers' Compensation Insurance; . . . [¶] c. Disability Income Insurance; [¶] d. Annuities; [¶] e. Variable products . . . [¶] . . . [¶] f. Employee Benefit Plans . . .; [¶] . . . [¶] g. Mutual

Funds registered with the Securities and Exchange Commission: [¶] 2. Providing advice, consultation, administration, . . . and services . . . in conjunction with any of the products listed . . . above . . . ." Each policy also contained several exclusions, including paragraph XXI, which stated the "[p]olicy does not apply to" "[a]ny claim for damages sustained or alleged to have been sustained by any person, firm or corporation that is not or was not . . . a client of the insured . . . ."

CBL developed a program that allowed individuals with a substantial net worth to purchase a large life insurance policy by assisting the insured in financing the policy's first-year premium. The program arose from a practice in the life insurance industry whereby insurers paid agents a commission of approximately 120 percent of the first year's premium on these policies. Under CBL's plan, once an insurer approved the issuance of a life insurance policy, the insured's broker would obtain a loan from CBL equal to the policy's first-year premium. The insured would use this loan to pay the first year's premium. When the broker received the commission, it would remit the amount of the insured's loan plus a portion of the commission exceeding that amount to CBL.

To fund its program, CBL obtained loans from third parties, including members of appellants Senna Investments, LLC (Senna), and Evergreen Financial Transactions, Inc. and Floyd Enterprises LLC (collectively Floyd) for a return of 2 to 3 percent a month on the amount borrowed. CBL also gave investors a promissory note and other documents, including collateral assignments, as security.

In May 2001, because of problems with the program, CBL entered into two agreements with Senna and its manager, appellant Senna Corporation. One agreement effectively made Senna and Floyd the sole source of funding for the premium financing program. The second agreement, entitled "Administrative Services Agreement" (emphasis and capitalization omitted), declared that "due to . . . dissatisfaction over the administration of the Program and to avoid the potential withdraw[al] of financial

support," Senna Corporation would "provide certain administrative services in connection with the funds provided" for a monthly fee.

Nevertheless, CBL's premium financing program deteriorated. In October, Bartholomew, on behalf of himself and Goold, and CBL, entered into a receivership agreement with Floyd in which he acknowledged "'the Bartholomew/Goold Group has breached its obligations, representations and warranties'" under various agreements and "engaged in 'gross negligence in performing or failing to perform its duties with respect to the management of the funds provided . . . for investment in the CBL program.'"

Numerous parties sued CBL, Bartholomew and Goold, including Floyd and Senna and its related entities. CBL declared bankruptcy. Senna, Floyd, Bartholomew, and Goold stipulated to dismiss all claims except for negligence and submit the latter issue to binding arbitration. The arbitrator issued an 11-page ruling that found Bartholomew and Goold were personally negligent and that Senna and Floyd were entitled to recover the principal due on promissory notes issued to them plus prejudgment interest. The arbitrator awarded Senna over $5.2 million and Floyd over $630,000. The court later confirmed the awards and entered judgments for Senna and Floyd.

PROCEDURAL BACKGROUND

CBL, Bartholomew, and Goold had tendered defense of the foregoing actions to American, which provided it to them under a reservation of rights. In June 2003, American filed an action for declaratory relief against numerous parties, including CBL, Bartholomew, Goold, Senna, Senna Corporation, and Floyd. (Case No. 03CC00217.) The complaint alleged "CBL has been sued in a number of cases which allege, inter alia, that CBL was conducting a[n] . . . investment scheme in which it . . . used investors' money to finance the purchase of [life insurance] policies and then failed to return the investment funds[] and . . . promised interest . . . ." (Italics omitted.)

American sought a declaration it "has no obligation to defend or indemnify under the Policies for the Claims" because "the conduct . . . which forms the basis of the Claims does not fall within the coverage grant in the policies and/or falls within one or more of the exclusions in the Polices." The superior court declared the litigation to be a complex matter.

In November 2005, after confirmation of the arbitration award in the underlying litigation, Senna and Senna Corporation sued American. (Case No. 05CC12217.) The original complaint sought damages for bad faith and declaratory relief. The latter cause of action alleged Senna could "enforce the Judgment against [American] pursuant to California Insurance Code § 11580" because it is "a judgment creditor of . . . Bartholomew and . . . Goold," and American "has refused to pay" citing a lack of "coverage under the Policies for the claims arbitrated . . . against" them. After American's two successful demurrers, Senna's action was reduced to only a claim for declaratory relief. The trial court consolidated the two actions.

At a May 2006 status review hearing, the court directed American's counsel "to present issues for preliminary resolution." The minute order issued after the next status review conference, held on September 11, directed American's counsel "to present 3 dispositive issues with supporting evidence (separate statement) and circulate it . . . by 10/23/06," and directed opposing counsel "to respond to statement by 11/13/06."

American filed and served a statement containing 47 factual statements, plus citations to supporting evidence, that it claimed were undisputed. As for the dispositive issues, American cited three exclusions in the policies, including paragraph XXI. Bartholomew and the Senna/Floyd parties filed separate responses. In his statement, Bartholomew included a statement of 11 additional facts, plus supporting documentation, that he asserted were undisputed. Senna's response addressed the facts listed in both American's and Bartholomew's statements.

At a November status review hearing, the court continued the matter until April 9, 2007 and directed a "Motion on dispositive issues to be filed by 2/15/07" with "[a]ny opposition to be filed by 3/15/07" and any "[r]eply . . . by 3/29/07."

American filed a "motion for ruling on legal issues." It included a statement of material facts consisting of the 47 facts listed in its original statement, the 11 contained in Bartholomew's response, its response to each factual statement disputed by Bartholomew and Senna along with supporting declarations and documents, plus a request for judicial notice of several documents. Bartholomew and Senna filed opposition to the motion on the merits.

After a hearing on the motion, the judge granted it, finding "on the . . . facts that I have in front of me [that] are not in dispute" the parties' loan transactions involved "a security transaction" and "this is not a claim by a client of the insured." The court subsequently entered a six-and-one-half page formal order granting the motion on the same grounds, declaring in part, "This matter turns on the interpretation of insurance policies" and "[t]here are no triable issues of material fact."

DISCUSSION

1. Noncompliance with the Summary Judgment Statutory Procedure

Appellants first challenge the procedure employed leading to entry of the judgment. They argue the trial court "developed its own procedure," which they describe as "truncated" (bold and capitalization omitted) and in conflict with the mandatory requirements of Code of Civil Procedure section 437c. Citing the fact this litigation had been determined to be "complex," and a court's authority in such matters to adopt suitable procedures to resolve the matter, plus claiming the procedure employed did not conflict with existing statutes, American asserts the trial court's procedure was valid.

The Supreme Court has recognized "that courts have fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation before them" and, "'to insure the orderly administration of justice,'" may "'"'adopt any suitable method of practice, both in ordinary actions and special proceedings, if the procedure is not specified by statute or by rules adopted by the Judicial Council.' [Citation.]" [Citation.]'" (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967; see also *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1351.) This principle is especially appropriate in cases involving complex litigation. As we recently held in *Cohn v. Corinthian Colleges, Inc.* (2008) 169 Cal.App.4th 523, "This case was deemed complex, and '"'judges must be permitted to bring management power to bear upon massive and complex litigation to prevent it from monopolizing the services of the court to the exclusion of other litigants.' [Citation.]"' [Citation.] . . . [T]he trial court is given the discretion to be flexible with complex cases." (*Id.* at p. 531.)

For example, in *Lu v. Superior Court* (1997) 55 Cal.App.4th 1264, finding "[t]he flexibility afforded courts by Code of Civil Procedure section 187 is particularly apt in cases managed under the complex litigation standard" (*id.* at p. 1271), we upheld a case management order that appointed a discovery referee and authorized the referee to conduct settlement conferences in a complex construction defect action. Also, in *Cottle v. Superior Court* (1992) 3 Cal.App.4th 1367, the appellate court rejected a claim the trial court failed to comply with the summary judgment statute when it issued an order in a complex litigation action that excluded evidence of physical injuries resulting from exposure to toxic chemicals after the plaintiffs failed to comply with the court's prior direction that each of them file a detailed statement establishing a prima facie claim. "We do not agree with petitioners' characterization of the order as a summary judgment motion. . . . Case law and various statutory provisions give courts broad and inherent powers and serve as the sources for the authority to issue such an order." (*Id.* at p. 1376.)

However, "[a] trial court is without authority to adopt local rules or procedures that conflict with statutes or with rules of court adopted by the Judicial Council, or that are inconsistent with the Constitution or case law. [Citations.]" (*Elkins v. Superior Court, supra,* 41 Cal.4th at p. 1351.) The rationale for this restriction is that when "a local court [seeks to] advance[] the goals of efficiency and conservation of judicial resources by adopting procedures . . . deviat[ing] from those established by statute, [it] thereby impair[s] the countervailing interests of litigants as well as the interest of the public in being afforded access to justice, resolution of a controversy on the merits, and a fair proceeding." (*Id.* at p. 1353.)

Concededly, the motion procedure leading to entry of judgment did not strictly comply with Code of Civil Procedure section 437c. Nor does American cite any authority for the proposition the summary judgment statute is inapplicable in complex litigation matters. Nonetheless, based on our de novo review of the record (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1196), we conclude the procedure employed by the trial court substantially complied with Code of Civil Procedure section 437c.

First, the court directed American to file a statement identifying three dispositive issues and include a statement of undisputed facts with citations to the evidence supporting each fact. American complied with this requirement. Bartholomew and Senna were afforded an opportunity to respond to American's statement and did so. Second, the court ordered the filing of a motion and opposition on the legal merits of these issues. By then, appellants knew what issues American claimed disposed of the case and the evidence upon which it relied to support its conclusion. It was only after the ruling on the second motion that American was allowed to file a third motion seeking entry of judgment based on the court's prior rulings.

Appellants argue the court's order violated Code of Civil Procedure section 437c because it did not "provide [them] with an opportunity" to either "file a separate statement with additional facts" or "file supplemental evidence in response to the

issues raised" by American. Nothing in the record supports these claims and, in fact, appellants' responses to American's statement of dispositive issues and undisputed facts belie the argument. Both parties disputed the existence or accuracy of several of American's factual statements with citations to supporting evidence just as occurs when a party opposes a summary judgment motion. Bartholomew's response also contained 11 additional facts not mentioned by American.

Appellants also contend the trial court's procedure violated the statutorily-imposed time requirements for a summary judgment motion. (Code Civ. Proc., § 437c, subds. (a) & (b).) Here, the record reflects the court and parties had been discussing the resolution of issues during status review hearings since at least May 2006. In September, the court directed American to identify three dispositive issues, plus the supporting facts and evidence. American complied with this order by the filing of its statement on October 23. At the November status review hearing, the court directed American to file a motion for ruling on the issues it had identified, setting a hearing for April 2007. Even after ruling in its favor on that motion, American had to file a third motion seeking entry of judgment based on the prior rulings. The underlying purpose for the statutory time requirements is "to allow the parties time to prepare their opposition and replies and to prepare for the hearing." (*Lackner v. North, supra*, 135 Cal.App.4th at p. 1208.) Given the status review hearings focusing on potential dispositive issues, the limited issues identified by American, and the length of the motion procedure implemented by the trial court in this case, the process used did not infringe on appellants' ability to oppose American's motions.

While we find the trial court substantially complied with Code of Civil Procedure section 437c, to avoid impairing the interests of litigants and the public in having access to justice, resolution of legal disputes on the merits, and fair proceedings (*Elkins v. Superior Court, supra*, 41 Cal.4th at p. 1353), we nonetheless strongly urge that trial courts always endeavor to closely adhere to a statutorily prescribed procedure even

in a case deemed to be a complex matter. But, even assuming the court may have erred by modifying the statutory procedure, such error requires reversal only if appellants can show they were prejudiced. (Cal. Const., art. VI, § 13; Code Civ. Proc., § 475; see *Mediterranean Const. Co. v. State Farm Fire & Cas. Co.* (1998) 66 Cal.App.4th 257, 267, fn. omitted ["Prejudice, of course, is an important element, and there is no per se rule requiring reversal"]; *Hawkins v. Wilton* (2006) 144 Cal.App.4th 936, 947 ["purely technical errors in granting summary judgment can be found harmless"].)

Appellants fail to carry their burden. They knew in October 2006 the grounds American claimed were dispositive of the case, plus the supporting material facts it asserted were undisputed and the evidence establishing each material fact. In compliance with the statutory purpose identified in *Lackner v. North, supra,* 135 Cal.App.4th at p. 1208, appellants were then allowed to respond to and challenge the existence of the purportedly undisputed material facts and supporting evidence, and to later oppose the legal arguments asserted by American in its subsequent motion for ruling on the dispositive issues. In fact, the trial court ruled in American's favor on only two of the three cited grounds. Appellants also had an additional opportunity to contest the trial court's final decision by opposing the motion for entry of judgment. Thus, the procedure employed by the trial court contained all of the elements required by Code of Civil Procedure section 437c and appellants fail to show the procedure used precluded them from adequately responding to American's claims or how strict adherence with the statute would have led to a different result in this case.

Of course, if a triable issue of material fact exists as to a claim or defense, the granting of a motion for summary judgment constitutes reversible error. (*Hawkins v. Wilton, supra,* 144 Cal.App.4th at pp. 947-948; *Callahan v. Chatsworth Park, Inc.* (1962) 204 Cal.App.2d 597, 610.) But, as discussed at greater length below, the trial court properly found as a matter of law that American was entitled to judgment based on the policies' nonclient exclusion.

2. The Nonclient Exclusion

Paragraph XXI of each policy American issued to CBL stated it "does not apply to" "[a]ny claim for damages sustained or alleged to have been sustained by any person, firm or corporation that is not or was not either a client of the insured, or a client's appointed administrator, executor, receiver, or trustee[] in bankruptcy." (Capitalization omitted.) The trial court ruled Senna and Floyd "[did] not qualify as 'clients' . . . under the plain meaning of the policies" because they were "third parties that loaned money as an investment" "with the expectation of receiving profitable returns."

Appellants attack this finding. They note the policies do not define the term "client" and argue any ambiguity must be construed against American. In addition, they claim the term must be construed in light of the nature of CBL's business.

As the trial court held, the determination of this case "turns on the interpretation of insurance policies." "As a question of law, the interpretation of an insurance policy is reviewed de novo under well-settled rules of contract interpretation. [Citation.] 'The fundamental rules of contract interpretation are based on the premise that the interpretation of a contract must give effect to the "mutual intention" of the parties. "Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation. (Civ. Code, § 1636.) Such intent is to be inferred, if possible, solely from the written provisions of the contract. (*Id.,* § 1639.) The 'clear and explicit' meaning of these provisions, interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage' (*id.,* § 1644), controls judicial interpretation. (*Id.,* § 1638.)"' [Citation.]" (*E.M.M.I. Inc. v. Zurich American Ins. Co.* (2004) 32 Cal.4th 465, 470.)

A standard dictionary definition of the term "client" states it is "a person who engages the professional advice or services of another . . . ." (Webster's 3d New Internat. Dict. (1981) p. 422; see also Black's Law Dict. (7th ed. 1999) p. 247, col. 2 ["A

person or entity that employs a professional for advice or help in that professional's line of work"].) Senna and Floyd loaned money to CBL to assist it in financing the payment of first-year premiums for persons purchasing large life insurance policies. The relationship between CBL and Senna and Floyd was that of borrower and lenders, not agent and clients. Appellants argue dictionary definitions are not controlling in determining the meaning of a word in this context. But there is no indication the policies used the term "client" in other than its ordinary and popular sense, and appellants do not cite any other reasonable construction of the term that would apply in the context of American's professional liability policies.

Appellants maintain the policies' lack of an express definition of the term "client" renders the use of that word ambiguous. Not so. "A policy provision is ambiguous when it is susceptible to two or more reasonable constructions. [Citation.] Language in an insurance policy is 'interpreted as a whole, and in the circumstances of the case, and cannot be found to be ambiguous in the abstract.' [Citation.] 'The proper question is whether the [provision or] word is ambiguous in the context of *this* policy and the circumstances of *this* case.' [Citation.]" (*E.M.M.I. Inc. v. Zurich American Ins. Co., supra,* 32 Cal.4th at p. 470.)

While no case has previously construed the term "client" in this particular context, *Fanaras Enterprises, Inc. v. Doane* (1996) 423 Mass. 121 [666 N.E.2d 1003] presents an analogous situation. There the Massachusetts Supreme Judicial Court held a malpractice insurer did not provide coverage for an attorney's failure to repay loans he owed to a party that had also paid him a retainer fee to perform legal work. "The fact that the plaintiff paid Doane a substantial retainer 'in return for full, total, and immediate access to Mr. Doane's legal advice,' . . . is of no consequence. That arrangement clearly contemplated the plaintiff's right to Doane's prompt legal advice *on request.* Nowhere in . . . any of the summary judgment materials is there the slightest suggestion that the plaintiff . . . requested Doane's advice or assistance with respect to the loans to Doane

and obtaining security for their repayment, or with respect to managing the plaintiff's money. To the contrary, the clear implication . . . is that Fanaras did not seek such advice or assistance but merely 'relied' on Doane to protect him. That reliance may or may not have been reasonable, but it did not establish an attorney-client relationship or legal malpractice with respect to the loans. It is not enough that, with respect to other matters, the parties were in an attorney-client relationship. [Citation.]" (666 N.E.2d at p. 1006.) Here, the relationship between appellants and CBL was solely that of lenders and borrower.

Furthermore, legal certainty in the form of a published appellate decision construing an insurance policy's coverage is not required. (See *Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 26 ["If the terms of the policy provide no potential for coverage, . . . the insurer acts properly in denying a defense even if that duty is later evaluated under case law that did not exist at the time of the defense tender"]; *State Farm Mut. Auto. Ins. Co. v. Longden* (1987) 197 Cal.App.3d 226, 233 ["We know of no case suggesting that an insurer has a duty . . . where the only potential for liability turns on resolution of a legal question"].)

Citing the policies' definition of "professional services" appellants claim it is broad enough to include CBL's business of assisting life insurance purchasers in financing payment of a policy's first year premium. Thus, they argue, "CBL . . . provided professional services to Senna and Floyd in the form of facilitating the funding of insurance policies and the management of the substantial documentation the . . . [p]rogram generated." The record does not support this interpretation.

Appellants mischaracterize the definition of "professional services." The policies defined this phrase to mean "those services necessary to the conduct of the insurance business of the . . . insured." It included first, "[t]he sale and/or servicing of" several specifically identified types of insurance and investment products, and second, "[p]roviding advice, consultation, administration, . . . and services . . . in conjunction with

any of the products listed . . . above . . . ." While appellants rely on an excerpt from the latter subparagraph referring to "[p]roviding advice, consultation, administration, . . . and services," the coverage for those activities simply refers back to an insured's "sale and/or servicing of" the specified insurance and investment products. Contrary to Bartholomew the policies were not "broadly phrased to apply to a wide array of businesses in the insurance context."

While appellants seek to focus on the nature of CBL's business, in their separate statements of fact the parties agreed CBL was a life insurance agency. That was the sole business activity American agreed to insure. Simply because CBL chose to conduct another business venture either as its sole activity or as an adjunct to selling and servicing insurance does not mean American's policy applied to all of CBL's enterprises. Insurance "'[c]ontracts must be construed in harmony with the parties' intention at the time of contracting. [Citation]' [Citation.]" (*Tana v. Professionals Prototype I Ins. Co.* (1996) 47 Cal.App.4th 1612, 1619.) Thus, "the policy must be read as a whole, without giving a distorting emphasis to isolated words or phrases. [Citation.]" (*Id.* at p. 1618.)

Bartholomew claims he can present evidence American knew the nature of CBL's business when it issued the policies. First, as noted, this contradicts the undisputed fact CBL was a licensed insurance agency, not a finance business.

Second, to the extent Bartholomew suggests the parties intended the policies would apply to CBL's lending activity, the principles limiting the admissibility of extrinsic evidence to show the intent of contracting parties would bar proof of such intention. "Under the parol evidence rule, extrinsic evidence is not admissible to contradict express terms in a written contract or to explain what the agreement was. [Citation.] . . . Parol evidence may be admitted to explain the meaning of a writing when the meaning urged is one to which the written contract term is reasonably susceptible or when the contract is ambiguous. [Citations.] Parol evidence cannot, however, be admitted to show intention independent of an unambiguous written instrument.

[Citation.]" (*Sunniland Fruit, Inc. v. Verni* (1991) 233 Cal.App.3d 892, 898 [error to admit fruit grower's testimony the advance paid to him by corporation that agreed to pick, pack, and market produce constituted minimum recovery rather than loan]; *Employers Reinsurance Co. v. Superior Court* (2008) 161 Cal.App.4th 906, 920 [applying these principles to insurance policy].) Given the express terms of coverage stated in the policies, appellants would be precluded from showing American intended them to cover the activities of a finance company rather than an insurance agency.

Finally, Bartholomew's claim that American's purported knowledge of CBL's business rendered the policies illusory contracts cannot help appellants. "An agreement is illusory and there is no valid contract when one of the parties assumes no obligation. [Citation.]" (*Scottsdale Ins. Co. v. Essex Ins. Co.* (2002) 98 Cal.App.4th 86, 95.) Bartholomew and Goold undoubtedly knew CBL was not in the business of selling insurance. Thus, at best, they would be entitled to merely seek restitution for the premiums CBL paid American. (Civ. Code, §§ 1689, subd. (b)(4), 1692; 1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, §§ 935, 937, pp. 1029-1030, 1031-1032.) Senna, as a judgment creditor, is seeking to recover under Insurance Code section 11580. If the policies are invalid, it cannot obtain relief from American. (*Emery v. Pacific Employers Ins. Co.* (1937) 8 Cal.2d 663, 665 ["By statutory provision . . . the right of the injured person who has secured judgment against the insured is to bring an action against the insurer 'on the policy and subject to its terms and limitations'" and "if the policy is void or voidable . . ., plaintiffs cannot recover thereon"].)

The trial court properly found the nonclient exclusion applied in this case. Where a judgment is appealed on several grounds only one of which is necessary to support the trial court's decision, an appellate court may affirm the judgment on that basis alone and disregard the other grounds. (*Crogan v. Metz* (1956) 47 Cal.2d 398, 403; *Porter v. Miller* (1927) 201 Cal. 750, 754.) Consequently, we need not determine

whether the trial court also properly found the securities transaction exclusion applies in this case.

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs on appeal.

RYLAARSDAM, ACTING P. J.

I CONCUR:

BEDSWORTH, J.

Aronson, J., Concurring.

I concur in the result reached by the majority, but write separately to address whether a trial court has the authority to deviate from the statutory procedure for summary judgment when hearing a "complex" civil litigation case. In my view, a trial court has no authority to create a modified summary judgment procedure, even one that offers a more efficient and cost-effective alternative for complex civil litigation cases. I do not think this is a controversial proposition, but unfortunately the majority fails to take a position on the issue, at least one I could discern. This is puzzling, considering the consistent body of law on the subject.

The California Supreme Court has declared trial courts have no authority to create procedures that conflict with governing statutes. (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967 (*Rutherford*).) In *Lokeijak v. City of Irvine* (1998) 65 Cal.App.4th 341, 344, we relied on *Rutherford* in concluding a trial court lacked the authority to prohibit the filing of summary judgment motions unless the parties first discussed with the court potential alternatives, such as a mini-trial or pretrial motion. In *Mediterranean Construction Co. v. State Farm Fire & Casualty Co.* (1998) 66 Cal.App.4th 257, 265 (*Mediterranean*), we held a trial court's policy prohibiting oral argument in a summary judgment proceeding violated a party's statutory right to a hearing under the summary judgment statute. (See also *McMahon v. Superior Court* (2003) 106 Cal.App.4th 112, 118 ["in light of express statutory language, trial courts do not have authority to shorten the minimum notice period for summary judgment hearings"]; *Kalivas v. Barry Controls Corp*. (1996) 49 Cal.App.4th 1152, 1158, 1160 [trial judges have no authority to create procedures that conflict with any statute]; *Wells Fargo Bank v. Superior Court* (1988) 206 Cal.App.3d 918, 922 ["[Code of Civil Procedure s]ection 437c does not categorize summary judgment motions depending on their difficulty and assign different timing requirements to more difficult motions"].)

Trial courts assigned to hear complex civil litigation calendars are bound by the same statutes governing other cases. True, courts face severe challenges in handling difficult and lengthy cases in an era of diminishing resources. Although trial courts have broad discretion to manage complex litigation cases, no special dispensation from governing statutes applies. (See *Rutherford, supra*, 16 Cal.4th at pp. 967-968 [a burden shifting procedure that conflicts with state law cannot be viewed as a valid exercise of the court's inherent judicial power to adopt procedures for resolving complex litigation].) *First State Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 324 is instructive. There, the appellate court invalidated a trial court order precluding any party from filing a summary judgment motion without first complying with a complex litigation case management order that created a multi-step process for briefing and hearing dispositive motions. (*Id.* at pp. 327-328.) The court explained Code of Civil Procedure section 437c (all statutory references are to this code) provided litigants the right to file a summary judgment motion "at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed" (§ 437c, subd. (a)), but the trial court had the inherent power to defer hearing the motion until the parties addressed other issues (*First State Ins. Co.*, at pp. 333-334).

Here, the trial court's procedure permitted American to file its separate statement without a memorandum of points and authorities, and required defendants to submit their separate statement without the benefit of the moving party's points and authorities supporting its legal argument. The trial court authorized American to file its legal arguments only after the parties exchanged separate statements, and the court apparently did not address whether defendants could offer supplemental evidence in response to American's legal arguments supporting dismissal. Unlike the procedure the trial court adopted, section 437c entitles the opposing party to receive the moving party's memorandum of points and authorities with the separate statement, and allows the nonmoving party to file supplemental evidence in response.

Requiring the party opposing summary judgment to produce its evidence or file its separate statement, or to do anything at all before receiving a motion and a memorandum of points and authorities, directly contravenes the specific burden-shifting provision in section 437c, where the Legislature established the nonmoving party need not respond until the moving party has met its burden of showing it is entitled to summary judgment. Merely producing facts, as the moving party did here, does not show entitlement to summary judgment; instead, those facts must support the legal theory or rule which demonstrates the party is entitled to summary judgment. (See section 437c, subd. (p)(2).) Because a summary judgment grant terminates a party's right to trial, it is important "'that all of the procedural requirements for the granting of such a motion be satisfied . . . .'" (*Mediterranean, supra*, 66 Cal.App.4th at p. 262.) Requiring the moving party to file its legal memorandum of points and authorities with its separate statement ensures the opposing party knows what issues to address and what facts it must produce to prevail. (See *Hawkins v. Wilton* (2006) 144 Cal.App.4th 936, 946.) This means applying the Legislature's "step-by-step evaluation of the moving and opposing papers." (*Brantley v. Pisaro* (1996) 42 Cal.App.4th 1591, 1607.)

The majority concludes the trial court's procedure "substantially complied" with section 437c. Does this mean the trial court's procedural deviation from the summary judgment statute was so minimal it did not constitute error? If so, would a trial court order reducing section 437c's 75-day notice requirement to 74 days substantially comply with the statute and therefore not constitute error? The majority's opinion sheds no light on the point.

I join my colleagues, however, in concluding appellants failed to show any error was prejudicial, and therefore concur in the decision to affirm.

ARONSON, J.